

REMARKS

1. In response to the Office Action mailed October 14, 2010, Applicant respectfully requests reconsideration. Claims 1-12, 14, 22-24, 27-31, 33, 37-42, 45-52, 55-56, 59, 61 and 64-66 were last presented for examination. In the outstanding Office Action, claims 1-12, 14, 22-24, 27-31, 33, 37-42, 45-52, 55-56, 59, 61 and 64-66 were rejected. Applicant has amended claims 1-8, 10-12, 14, 23, 24, 27-31, 33, 37-41, 45-47, 49-52, 55, 56, 59, 61 and 64-66, cancelled claim 9, and added claim 67. Upon entry of this paper, claims 1-8, 10-12, 14, 22-24, 27-31, 33, 37-42, 45-52, 55-56, 59, 61 and 64-67 will be pending in this application. Of these forty-three (43) claims, five (5) claims (claims 1, 39, 51, 65 and 66) are independent.

2. Based upon the above Amendments and following Remarks, Applicant respectfully requests that all outstanding objections and rejections be reconsidered and withdrawn.

Drawings

3. Applicants submit herewith, in Appendix 1, a replacement drawing sheet bearing Figures 1-3 to replace the replacement drawing sheet filed June 9, 2006, also bearing Figures 1-3. In the attached replacement sheet, Applicants have corrected FIG. 1 so that headpiece 37 is labeled with reference symbol "37" instead of "27". Applicants have also corrected FIG. 2 so that reference symbol "28" correctly labels cover 28 instead of a control enclosed within cover 28, and so that user interface 24, which is described in the specification, is labeled in FIG. 2. Applicants have also corrected FIG. 3 to include reference symbol "12" indicating the ear hook 12 described in the specification.

4. Additionally, Applicant notes that the Examiner has failed to indicate on the Office Action Summary that the drawings submitted on June 9, 2006, have been accepted by the Examiner. Applicant respectfully requests that the Examiner indicate the acceptance of those drawings, and the drawings submitted herewith, in the next official communication.

Amendments to the Specification

5. In the above amendments to the specification, Applicants have amended the Title in order to make it more descriptive. Applicants have also amended several paragraphs of the specification to correct informalities.

Claim Rejections under §§102 and 103

6. Claims 1-8, 12, 22-24, 27-31, 33, 38-42, 48-52, 55-56, 59, 61 and 64-66 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by U.S. Patent No. 5,824,022 to Zilberman et al. (hereinafter, “Zilberman”). Additionally, claims 9-11, 14, 37 and 45-47 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Zilberman. Applicants respectfully request that these rejections be reconsidered and withdrawn for at least the following reasons.

7. Zilberman discloses “a cochlear stimulation system that includes: (1) a multichannel implantable cochlear stimulator (ICS); (2) a behind-the-ear (BTE) wearable speech processor, including: . . . an FM receiver; [and] (3) a remote control unit (RCU), including: an FM transmitter.” (See, Zilberman, col. 2, lns. 23-29.) Zilberman discloses that “the BTE processor 30 includes a case 32 formed and shaped to fit behind the ear of a user,” and states that “[m]any, if not all, of the electronic circuits used by the processor 30 are housed within the case 32.” (See, Zilberman, col. 5, lns. 14-18.) Additionally, “a headpiece assembly 34, which is affixed to the case 32,” may house some of the electronics of BTE processor 30. (See, Zilberman, col. 5, lns. 18-21.) As noted above, the system also includes “a remote control unit (RCU) 50 that may be used to control the BTE speech processor 30.” (See, Zilberman, col. 5, lns. 38-39.) RCU 50 has a case “made from a ruggedized plastic, or other light, strong material, which protects the circuitry housed therein from being damaged should the RCU be dropped or stepped on.” (See, Zilberman, col. 5, lns. 45-49.) Zilberman also discloses that the RCU “is telecommunicatively coupled—e.g., through a radio frequency (e.g., FM), ultra-sonic, infrared, or other wireless link, to the BTE speech processor.” (See, Zilberman, col. 3, ln. 66 through col. 4, ln. 5.)

Claim 1

8. In the Office Action, the Examiner asserts that “figure 5 shows a first housing 30, and a second housing 50 that is ‘connectable’ to the first housing. The term ‘connectable’ does not serve to limit the structure of the claim, but is rather an intended function of the claimed system.” (See, Office Action, pg. 2.) Applicants’ claim 1 no longer uses the term “connectable,” but instead recites, in part, “a first housing containing a primary signal processor . . . and a plurality of second housings, each configured to removably connect to the first housing.” (See, Applicants’ claim 1, above; emphasis added.) Applicants submit that the recitation “configured to removably connect to the first housing” is a structural limitation of each of the claimed second housings. As such, Applicants submit that the language “configured to removably connect to the first housing” must be afforded patentable weight.

9. As noted above, the Examiner asserts in the Office Action that “figure 5 shows a first housing 30, and a second housing 50 that is ‘connectable’ to the first housing.” (See, Office Action, pg. 2.) Applicant submits that the term “housing” is understood to mean “a part designed to shelter, cover, contain, or support a component.” (See, housing. Dictionary.com. *Collins English Dictionary - Complete & Unabridged 10th Edition*. HarperCollins Publishers. <http://dictionary.reference.com/browse/housing>.) As such, Applicants assert that neither the BTE processor 30 itself nor the RCU unit 50 itself is equivalent to a “housing” as neither of these devices is “designed to shelter, cover, contain, or support” another component. Although these devices may include housings, Applicants submit that the devices themselves are not housings.

10. Moreover, even assuming, without admitting, that the respective cases of the BTE processor 30 and the RCU unit 50 may be characterized as housings, Applicants submit that Zilberman does not anticipate or render obvious Applicants’ claim 1. More specifically, Applicant submits that Zilberman fails to disclose that the above-described case of RCU unit 50 is “configured to removably connect to” to the above-described case of BTE processor

30. (See, Applicants' claim 1, above.) In particular, Zilberman does not disclose, and the Examiner does not assert, that the case of RCU unit 50 is configured to physically connect to the case of BTE processor 30. Rather, the Examiner alleges that "the second housing 50 can be said to be communicatively connected to the first housing." (See, Office Action, pg. 2.) However, while various components of BTE processor 30 and RCU unit 50 may be configured to communicate with one another, Zilberman fails to disclose that the case of RCU unit 50 is itself configured to be "communicatively connected" to the case of BTE processor 30. Applicants submit that Zilberman fails to disclose any communication functionality for either of these cases. Rather, as noted above, Zilberman describes the case of BTE processor 30 as "formed and shaped to fit behind the ear of a user" and as housing some or all of the circuitry used by the BTE processor 30. Zilberman similarly describes the case of RCU unit 50 as "made from a ruggedized plastic, or other light, strong material, which protects the circuitry housed therein from being damaged." (See, Zilberman, col. 5, lns. 14-18 and 45-48; emphasis added.)

11. For at least the reasons discussed above, Applicants submit that Zilberman fails to anticipate or render obvious "a plurality of second housings, each configured to removably connect to the first housing," as recited in Applicants' claim 1.

12. Additionally, in the rejection of Applicants' dependent claim 37 under 35 U.S.C. §103, the Examiner states that "the second housing could be connected to the first housing in a similar manner to that of the headpiece assembly 34 that is shown as being connectable to the first housing 30 in figures 2 and 3a of Zilberman." (See, Office Action, pg. 3.) However, as noted above, Zilberman discloses "a headpiece assembly 34, which is affixed to the case 32." (See, Zilberman, col. 5, lns. 20-21; emphasis added.) As such, Zilberman fails to disclose that headpiece assembly 34 is "configured to removably connect to" the case of BTE processor 30. (See, Applicants' claim 1, above; emphasis added.) Additionally, the Examiner contends that "the headpiece assembly 34 . . . is shown as being connectable to the first housing 30 in figures 2 and 3a of Zilberman." (See, Office Action, pg. 3.) However, FIGS. 3A and 3B of Zilberman show headpiece assembly 34 affixed to

the case of BTE processor 30. In addition, FIG. 2 is merely “an exploded view” of BTE processor 30 and headpiece assembly 34, and as such does not disclose or suggest that headpiece assembly 34 is removable from the case of BTE processor 30. (*See*, Zilberman, col. 4, lns. 29-31.)

13. Accordingly, Applicants submit that Zilberman does not disclose or suggest modifying the case of RCU unit 50 such that it is “configured to removably connect to” the case of BTE processor 30. (*See*, Applicants’ claim 1, above; emphasis added.) Rather, if the RCU unit 50 were connected to the BTE processor 30 “in a manner similar to that shown by headpiece 34,” as suggested by the Examiner, Applicants submit that RCU unit 50 would be affixed to the case of BTE processor 30, and not “configured to removably connect to” the case of BTE processor 30. (*See*, Applicants’ claim 1, above.) As such, Applicants submit that the Examiner’s proposed modification of Zilberman fails to disclose all of the features of Applicants’ claim 1.

14. Moreover, Applicants submit that the Examiner’s obviousness conclusion is improper because the Examiner has failed to provide any reason for making the proposed modification of Zilberman. As stated by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” (127 S.Ct. 1727, 1741 (2007).) The Supreme Court recognized that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some **articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.**” (*See KSR*, 127 S.Ct. at 1741 (citing *In re Kahn*, 441 F.3d 977, 988 (C.A.Fed. 2006); emphasis added.) Applicants submit that the Examiner has failed to meet these legal requirements because the Examiner has not provided any reason for modifying Zilberman such that the case of RCU unit 50 is connected to the case of BTE processor 30 in a manner similar to headpiece assembly 34.

15. Additionally, the Manual of Patent Examining Procedure (MPEP) states that “[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).” (See, MPEP 2143.01(V)). Applicants submit that the intended purpose of Zilberman’s **remote control** unit (RCU) 50 is to control BTE speech processor 30 **remotely**. As one example, Zilberman discloses that “the RCU may be given to, or placed near, a teacher, performer or other person located remotely from the ICS user, thereby allowing the user to ‘hear’ such remote person.” (See, Zilberman, col. 2, Ins. 43-46; emphasis added.) As such, Applicants submit that RCU 50 would be rendered unsatisfactory for its intended purpose if it were affixed to the case of BTE processor 30 like headpiece assembly 34, as suggested by the Examiner, since RCU 50 would no longer be remote from BTE processor 30.

16. For at least the reasons discussed above, Applicants submit that Zilberman fails to disclose or render obvious “a first housing containing a primary signal processor . . . and a plurality of second housings, each configured to removably connect to the first housing,” as recited in Applicants’ claim 1. Accordingly, Applicants respectfully request that the rejection of claim be reconsidered and withdrawn.

Claim 39

17. Claim 39 recites “a first housing containing a primary signal processor . . . and a second housing configured to removably connect to the first housing.” (*See*, Applicants’ claim 39, above.) At least for reasons similar to those discussed above in relation to claim 1, Applicants submit that Zilberman fails to disclose or render obvious the above-quoted features recited in Applicants’ claim 39. As such, Applicants respectfully request that the rejection of claim 39 be reconsidered and withdrawn.

Claim 51

18. Claim 51 recites “a first housing containing a primary signal processor . . . and a second housing configured to removably connect to the first housing.” (*See*, Applicants’ claim 51, above.) At least for reasons similar to those discussed above in relation to claim 1, Applicants submit that Zilberman fails to disclose or render obvious the above-quoted features recited in Applicants’ claim 51. As such, Applicants respectfully request that the rejection of claim 51 be reconsidered and withdrawn.

Claim 65

19. Claim 65 recites “a first component configured to be worn behind an ear of a recipient . . . and a second component configured to removably connect to the first component.” (*See*, Applicants’ claim 65, above.) At least for reasons similar to those discussed above in relation to claim 1, Applicants submit that Zilberman fails to disclose or render obvious the above-quoted features recited in Applicants’ claim 65. As such, Applicants respectfully request that the rejection of claim 65 be reconsidered and withdrawn.

Claim 66

20. Claim 66 recites “a first component configured to be worn behind an ear of a recipient . . . and a second component configured to removably connect to the first component.” (*See*, Applicants’ claim 66, above.) At least for reasons similar to those discussed above in relation to claim 1, Applicants submit that Zilberman fails to disclose or render obvious the

above-quoted features recited in Applicants' claim 66. As such, Applicants respectfully request that the rejection of claim 66 be reconsidered and withdrawn.

Priority under 35 U.S.C. 119

21. Applicant also notes that the Examiner has failed to acknowledge Applicant's claim for foreign priority on the Office Action Summary. Applicant respectfully requests that the Examiner acknowledge Applicant's claim for foreign priority, and receipt of a certified copy of the foreign priority document, in the next official communication.

Conclusion

22. In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. A notice to this effect is respectfully requested.

23. Applicants make no admissions by not addressing any outstanding rejections or bases of rejections. Furthermore, Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Thus, cancellations and amendments of above claims, are not to be construed as an admission regarding the patentability of any claims.

Dated: January 14, 2011

Respectfully submitted,

/Michael G. Verga/
Michael G. Verga
Registration No.: 39,410
KILPATRICK TOWNSEND
& STOCKTON LLP
607 14th Street, NW
Suite 900
Washington, DC 20005
(404) 815-6500
(404) 815-6555 (Fax)
Attorney for Applicants

APPENDIX 1